

AMENDED IN SENATE JUNE 7, 2012

AMENDED IN SENATE JUNE 9, 2011

AMENDED IN ASSEMBLY MAY 11, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 999**

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**Introduced by Assembly Member Yamada  
(Coauthor: Assembly Member Skinner)**

February 18, 2011

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An act to amend Sections 10234.6, 10234.93, 10236.1, 10236.13, and 10236.14 of, and to add Section 10236.2 to, the Insurance Code, relating to long-term care insurance.

### LEGISLATIVE COUNSEL'S DIGEST

AB 999, as amended, Yamada. Long-term care insurance.

Existing law provides for the regulation of insurers by the Department of Insurance, including insurers issuing policies of long-term care insurance. Existing law regulates the marketing or solicitation of long-term care insurance policies and, in that regard, requires specified disclosures to prospective applicants or enrollees. Existing law requires the Insurance Commissioner to annually prepare a consumer rate guide for long-term care insurance and to include specified information.

This bill would require an insurer of long-term care insurance to clearly post on its Internet Web site and provide written notice at the time of solicitation that a specimen individual policy form or group master policy and certificate form for each policy form offered by the insurer is available upon request and to provide that form within 15

calendar days upon request. This bill would require the annual consumer rate guide to include a specimen outline of coverage for each product currently marketed by each insurer listed in the rate guide.

Existing law requires the premium rate schedules for all individual and group long-term care insurance policies issued in this state to be filed with, and receive the prior approval of, the Insurance Commissioner before the policy may be offered, sold, issued, or delivered to a resident of this state. Existing law requires an insurer of long-term care insurance to submit to the Insurance Commissioner for approval all proposed premium rate schedule increases and to include specified information with the rate application. Approval of all premium rate schedule increases is subject to specified criteria.

This bill would provide that if the premiums in any rate revision filing calculated pursuant to those criteria produce a lifetime expected loss ratio that is less than the highest lifetime expected loss ratio for the policy form in the initial filing or for requested premium rates in any filing made after January 1, 2012 2013, the insurer *is would be* required to reduce the premiums in that filing such that the current lifetime expected loss ratio is equal to or greater than the highest filed loss ratio, as specified. The bill would set forth criteria for calculating the margin in the determination of a lifetime expected loss ratio.

~~With regard to individual or group long-term care insurance policies issued before the approval of premium rate schedules by the Insurance Commissioner, the bill would limit those premium rate schedule increases to no more than one in any 5-year period. For~~

*For* those policies, the bill would also prohibit an insurer from justifying a rate increase prior to approval by the Insurance Commissioner based upon asset investment yield rate changes, except as specified, and would require all of the experience on all similar long-term care policy forms issued by an insurer and its affiliates and retained within the affiliated group to be pooled together and used as the basis for determining whether an increase is reasonable or shall be approved under specified provisions. The bill would require similar long-term care policy forms to be classified into benefit classifications of nursing facility and residential care facility only, home care only, or comprehensive long-term care benefits. ~~With regard to the approval of other premium rate schedule increases by the Insurance Commissioner, the bill would limit premium rate schedule increases to no more than one in any 10-year period, except upon a demonstration of financial hardship, as specified.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 10234.6 of the Insurance Code is  
2     amended to read:
- 3     10234.6. (a) The commissioner shall, by June 1 of each year,  
4     jointly design the format and content of a consumer rate guide for  
5     long-term care insurance with a working group that includes  
6     representatives of the Health Insurance Counseling and Advocacy  
7     Program, the insurance industry, and insurance agents. The  
8     commissioner shall annually prepare the consumer rate guide for  
9     long-term care insurance that shall include, but not be limited to,  
10    the following information:
- 11    (1) A comparison of the different types of long-term care  
12    insurance and coverages available to California consumers and a  
13    specimen outline of coverage for each product currently marketed  
14    by each insurer listed in the rate guide.
- 15    (2) A premium history of each insurer that writes long-term  
16    care policies for all the types of long-term care insurance and  
17    coverages issued by the insurer in California.
- 18    (b) The consumer rate guide to be prepared by the commissioner  
19    shall consist of two parts: a history of the rates for all policies  
20    issued in California for the current year and for four preceding  
21    years, and a comparison of the policies, benefits, and sample  
22    premiums for all policies currently being issued for delivery in  
23    California.
- 24    (1) For the rate history portion of the rate guide required by this  
25    section, the department shall collect, and each insurer shall provide  
26    to the department, all of the following information for each  
27    long-term care policy, including all policies, whether issued by  
28    the insurer or purchased or acquired from another insurer, issued  
29    in California for the current year and for four preceding years:
- 30    (A) Company name.  
31    (B) Policy type.  
32    (C) Policy form identification.  
33    (D) Dates sold.  
34    (E) Date acquired (if applicable).  
35    (F) Premium rate increases requested.

- 1 (G) Premium rate increases approved.
- 2 (H) Dates of premium rate increase approvals.
- 3 (I) Any other information requested by the department.
- 4 (2) For the policy comparison portion of the rate guide required
- 5 by this section, the department shall collect, and each insurer shall
- 6 provide to the department, the information needed to complete the
- 7 following form, along with any other information requested by the
- 8 department, for each long-term care policy currently issued for
- 9 delivery in California, including all policies, whether issued by
- 10 the insurer or purchased or acquired from another insurer:

INSURANCE COMPANY NAME	Policy Form Number		
[List policy name for this form number, whether nursing home and residential care only, home care only, comprehensive, individual or group, partnership, tax or nontax qualified, all issue ages available, reimbursement or per diem.]			
<b>Maximum Policy Benefit</b> [List all maximum benefit amounts in years offered and dollars.]	30** day elimination period 3 year maximum policy benefit / \$109,000 * Other assumptions		
<b>Nursing Home Daily Benefit Amount</b> [List range in which daily benefit is offered from minimum to maximum.]	Issue Age	\$100 Daily Benefit Amount for Nursing Home & Home Care	\$100 Daily Benefit Amount for Nursing Home & Home Care (with 5% compound Inflation Protection)
<b>Residential Care Daily Benefit Amount *</b> [List all percentage amounts for which residential care benefits are offered as a percentage of the nursing home daily benefit.]	50		
	55		
	60		
	65		
	70		
	75		
<b>Home Care Benefit Amount</b> [List all percentage amounts for which home care benefits are offered as a percentage of the daily nursing home benefit. Specify whether paid as daily, weekly, or monthly.]	80		
	Other ages may be available.		
	30** day elimination period Lifetime Benefit / Unlimited * Other assumptions		
<b>Elimination Period</b> [List all days and/or amounts in which elimination periods are offered. Specify how policy counts home care service days towards elimination period.]	Issue Age	\$100 Daily Benefit Amount for Nursing Home & Home Care	\$100 Daily Benefit Amount for Nursing Home & Home Care (with 5% compound Inflation Protection)
<b>Inflation Protection</b> [List all options offered for inflation protection adjustment.]	50		
	55		
	60		
	65		
	70		
	75		
<b>Waiver of Premium</b> [List all options for comprehensive, nursing home only and home care only. Qualification rules.]	80		
	Other ages may be available.		

\*The residential care benefit is \_\_\_\_% of the daily nursing home benefit. If this is a comprehensive policy, the home care benefit is \_\_\_\_% of the daily nursing home benefit. If this is a home care only policy, the daily benefit is \$ \_\_\_\_\_. [List the minimum amount available on the company's policy forms as a percentage of the daily nursing home benefit.]

Please refer to Section # for information on premium increases, if any, since 1990 for this company

[\*\* Carrier may use 20-day elimination period if a 30-day elimination period is not offered.]

1 If an insurer does not offer a policy for sale that fits the criteria  
2 set forth in the sample premium portion of the policy comparison  
3 section of the rate guide, the department shall include in that section  
4 of the form for that policy a statement explaining that a policy  
5 fitting that criteria is not offered by the insurer and that the  
6 consumer may seek, from an agent, sample premium information  
7 for the insurer's policy that most closely resembles the policy in  
8 the sample.

9 The department shall use the format set forth in this section for  
10 the policy comparison portion of the rate guide, unless the working  
11 group convened pursuant to subdivision (a) designs an alternative  
12 format and agrees that it should be used instead.

13 In compiling the policy comparison portion of the rate guide,  
14 the department shall separate the group policies from the individual  
15 policies available for sale so that group policies for all insurers  
16 appear together in the guide and individual policies for all insurers  
17 appear together in the guide.

18 The policy comparison portion of the rate guide shall contain a  
19 cross-reference for each policy form listed indicating the page in  
20 the rate guide where rate information on the policy form can be  
21 found.

22 (c) The department shall publish, on the department's Internet  
23 Web site, a premium history of each insurer that writes long-term  
24 care policies for all the types of long-term care insurance and  
25 coverages issued by the insurer in each state. Each insurer shall  
26 provide to the department all of the information listed in paragraph  
27 (1) of subdivision (b) for each long-term care policy, including all  
28 policies, whether issued by the insurer or purchased or acquired  
29 from another insurer, issued in the United States for the current  
30 year and for *the* nine preceding years.

31 (d) Insurers shall provide the information required pursuant to  
32 subdivisions (b) and (c) no later than July 31 of each year,  
33 commencing in 2000.

34 (e) The consumer rate guide shall be published no later than  
35 December 1st of each year commencing in 2000, and shall be  
36 distributed using all of the following methods:

37 (1) Through Health Insurance Counseling and Advocacy  
38 Program (HICAP) offices.

39 (2) By telephone using the department's consumer toll-free  
40 telephone number.

1 (3) On the department's Internet Web site.

2 (4) A notice in the Long-Term Care Insurance Personal  
3 Worksheet required by Section 10234.95.

4 (f) Notwithstanding any other provision of law, the data  
5 submitted by insurers to the department pursuant to this section  
6 are public records, and shall be open to inspection by members of  
7 the public pursuant to the procedures of the California Public  
8 Records Act. However, a trade secret, as defined in subdivision  
9 (d) of Section 3426.1 of the Civil Code, is not subject to this  
10 subdivision.

11 SEC. 2. Section 10234.93 of the Insurance Code is amended  
12 to read:

13 10234.93. (a) Every insurer of long-term care in California  
14 shall:

15 (1) Establish marketing procedures to assure that any comparison  
16 of policies by its agents or other producers will be fair and accurate.

17 (2) Establish marketing procedures to assure excessive insurance  
18 is not sold or issued.

19 (3) Submit to the commissioner within six months of the  
20 effective date of this act, a list of all agents or other insurer  
21 representatives authorized to solicit individual consumers for the  
22 sale of long-term care insurance. These submissions shall be  
23 updated at least semiannually.

24 (4) Provide the following training and require that each agent  
25 or other insurer representative authorized to solicit individual  
26 consumers for the sale of long-term care insurance shall  
27 satisfactorily complete the following training requirements that,  
28 for resident licensees, shall count toward the licensee's continuing  
29 education requirement, but may still result in completing more  
30 than the minimum number of continuing education hours set forth  
31 in this section:

32 (A) For licensees issued a license after January 1, 1992, eight  
33 hours of training in each of the first four 12-month periods  
34 beginning from the date of original license issuance and thereafter  
35 eight hours of training prior to each license renewal.

36 (B) For licensees issued a license before January 1, 1992, eight  
37 hours of training prior to each license renewal.

38 (C) For nonresident licensees that are not otherwise subject to  
39 the continuing education requirements set forth in Section 1749.3,  
40 the evidence of training required by this section shall be filed with

1 and approved by the commissioner as provided in subdivision (g)  
2 of Section 1749.4.

3 Licensees shall complete the initial training requirements of this  
4 section prior to being authorized to solicit individual consumers  
5 for the sale of long-term care insurance.

6 The training required by this section shall consist of topics related  
7 to long-term care services and long-term care insurance, including,  
8 but not limited to, California regulations and requirements,  
9 available long-term care services and facilities, changes or  
10 improvements in services or facilities, and alternatives to the  
11 purchase of private long-term care insurance. On or before July  
12 1, 1998, the following additional training topics shall be required:  
13 differences in eligibility for benefits and tax treatment between  
14 policies intended to be federally qualified and those not intended  
15 to be federally qualified, the effect of inflation in eroding the value  
16 of benefits and the importance of inflation protection, and NAIC  
17 consumer suitability standards and guidelines.

18 (5) Display prominently on page one of the policy or certificate  
19 and the outline of coverage: "Notice to buyer: This policy may not  
20 cover all of the costs associated with long-term care incurred by  
21 the buyer during the period of coverage. The buyer is advised to  
22 review carefully all policy limitations."

23 (6) Inquire and otherwise make every reasonable effort to  
24 identify whether a prospective applicant or enrollee for long-term  
25 care insurance already has accident and sickness or long-term care  
26 insurance and the types and amounts of any such insurance.

27 (7) Every insurer or entity marketing long-term care insurance  
28 shall establish auditable procedures for verifying compliance with  
29 this subdivision.

30 (8) Every insurer shall provide to a prospective applicant, at the  
31 time of solicitation, written notice that the Health Insurance  
32 Counseling and Advocacy Program (HICAP) provides health  
33 insurance counseling to senior California residents free of charge.  
34 Every agent shall provide the name, address, and telephone number  
35 of the local HICAP program and the statewide HICAP number,  
36 1-800-434-0222.

37 (9) Provide a copy of the long-term care insurance shoppers  
38 guide developed by the California Department of Aging to each  
39 prospective applicant prior to the presentation of an application or  
40 enrollment form for insurance.



(10) Clearly post on its Internet Web site and provide written notice at the time of solicitation that a specimen individual policy form or group master policy and certificate form for each policy form offered in this state is available to a prospective applicant upon request. The individual specimen policy form or group master policy and certificate form shall be provided to a requesting party within 15 calendar days or receipt of a request.

(b) In addition to other unfair trade practices, including those identified in this code, the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

~~SEC. 3. Section 10236.1 of the Insurance Code is amended to read:~~

~~10236.1. (a) Benefits under individual long-term care insurance policies issued before new premium rate schedules are approved under Section 10236.11 shall be deemed reasonable in relation to premiums if the expected loss ratio is at least 60 percent, calculated in a manner that provides for adequate reserving of the long-term care insurance risk.~~

~~(b) For individual long-term care insurance policies issued before new premium rate schedules are approved under Section 10236.11, and for which rate revisions are filed on or after January 1, 2010, benefits shall be deemed reasonable in relation to the premium if the premium rate schedules have a lifetime expected loss ratio of at least 60 percent of the premium scale in effect on December 31, 2009, plus 70 percent of premium increases filed~~

1 on or after January 1, 2010, calculated in a manner that provides  
2 for adequate reserving of the long-term care insurance risk.  
3 However, if the premiums in any rate revision filing calculated in  
4 this manner produce a lifetime expected loss ratio that is less than  
5 the highest lifetime expected loss ratio for this policy form in the  
6 initial filing or that for requested premium rates in any filing made  
7 after January 1, 2012, the insurer shall reduce the premiums in the  
8 filing so that the current lifetime expected loss ratio is equal to or  
9 greater than the highest initially filed loss ratio or that for requested  
10 premium rates filed after January 1, 2012. In the determination of  
11 a lifetime expected loss ratio, a margin may reflect changes in the  
12 manner in which risks are shared between the insurer and a block  
13 of policies due to changes in this law effective January 1, 2012,  
14 and that margin shall not be increased unless the manner in which  
15 risks are shared between the insurer and block of policies is  
16 changed further by law or regulation. The determination of the  
17 lifetime expected loss ratio shall be based on the actual distribution  
18 of policies in force at the time of the first filing after January 1,  
19 2012, and not any prior assumed distribution.

20 (e) In evaluating the expected loss ratio, due consideration shall  
21 be given to all relevant factors, including the following:

22 (1) Statistical credibility of incurred claims experience and  
23 earned premiums.

24 (2) The period for which rates are computed to provide coverage.

25 (3) Experienced and projected trends.

26 (4) Concentration of experience within early policy duration.

27 (5) Expected claim fluctuation.

28 (6) Experience refunds, adjustments, or dividends.

29 (7) Renewability features.

30 (8) All appropriate expense factors.

31 (9) The discount rate used in the calculation of lifetime expected  
32 loss ratios.

33 (10) Experimental nature of the coverage.

34 (11) Policy reserves.

35 (12) Mix of business by risk classification.

36 (13) Product features, such as long elimination periods, high  
37 deductibles, and high maximum limits.

38 (d) Asset investment yield rate changes may not be used to  
39 justify a rate increase unless the insurer can demonstrate that its  
40 return on investments is lower than the maximum valuation interest

1 rate for contract reserves for those policies or the commissioner  
2 determines that a change in interest rates is justified due to changes  
3 in laws or regulations that are retroactively applicable to long-term  
4 care insurance previously sold in this state.

5 (e) ~~The experience on all similar long-term care policy forms~~  
6 ~~issued in this state by an insurer and its affiliates and retained~~  
7 ~~within the affiliated group shall be pooled together and the~~  
8 ~~combined experience shall be used as the basis for assumptions~~  
9 ~~that satisfy the requirements in subdivisions (a) and (b). Those~~  
10 ~~assumptions and requested rate increases may vary by policy form~~  
11 ~~if actuarially appropriate. Similar long-term care policy forms shall~~  
12 ~~be classified into one of the following benefit classifications:~~  
13 ~~nursing facility and residential care facility only, home care only,~~  
14 ~~or comprehensive long-term care benefits.~~

15 ~~Beginning with the first rate application filed after January 1,~~  
16 ~~2012, no more than one rate increase for any policy form shall be~~  
17 ~~approved in any five-year period.~~

18 (g) ~~Notwithstanding any other provision of this section, for rate~~  
19 ~~revisions filed on or after January 1, 2010, the commissioner may~~  
20 ~~approve an application for a rate revision based on less than a~~  
21 ~~70-percent loss ratio, but not less than a 60-percent loss ratio, for~~  
22 ~~the portion attributable to the rate increase if an insurer can~~  
23 ~~demonstrate that the rates are necessary to protect the financial~~  
24 ~~condition of the insurer, including avoidance of further reductions~~  
25 ~~in capital and surplus.~~

26 (h) ~~This section applies only to long-term care insurance policies~~  
27 ~~issued before the approval of rate schedules under Section~~  
28 ~~10236.11.~~

29 *SEC. 3. Section 10236.1 of the Insurance Code is amended to*  
30 *read:*

31 10236.1. (a) Benefits under individual long-term care insurance  
32 policies issued before new premium rate schedules are approved  
33 under Section 10236.11 shall be deemed reasonable in relation to  
34 premiums if the expected loss ratio is at least 60 percent, calculated  
35 in a manner that provides for adequate reserving of the long-term  
36 care insurance risk.

37 (b) (1) For individual long-term care insurance policies issued  
38 before new premium rate schedules are approved under Section  
39 10236.11, and for which rate revisions are filed on or after January  
40 1, 2010, benefits shall be deemed reasonable in relation to the

1 premium if the premium rate schedules have a lifetime expected  
2 loss ratio of at least 60 percent of the premium scale in effect on  
3 December 31, 2009, plus 70 percent of premium increases filed  
4 on or after January 1, 2010, calculated in a manner that provides  
5 for adequate reserving of the long-term care insurance risk.

6 *(2) However, if the premiums in any rate revision filing*  
7 *calculated in the manner provided in paragraph (1) produce a*  
8 *lifetime expected loss ratio that is less than the highest lifetime*  
9 *expected loss ratio for this policy form in the initial filing or that*  
10 *for requested premium rates in any filing made after January 1,*  
11 *2013, the insurer shall reduce the premiums in the filing so that*  
12 *the current lifetime expected loss ratio is equal to or greater than*  
13 *the highest initially filed loss ratio or that for requested premium*  
14 *rates filed after January 1, 2013. In the determination of a lifetime*  
15 *expected loss ratio, a margin may reflect changes in the manner*  
16 *in which risks are shared between the insurer and a block of*  
17 *policies due to changes in this law effective January 1, 2013, and*  
18 *that margin shall not be increased unless the manner in which*  
19 *risks are shared between the insurer and the block of policies is*  
20 *changed further by law or regulation. The determination of the*  
21 *lifetime expected loss ratio shall be based on the actual distribution*  
22 *of policies in force at the time of the first filing after January 1,*  
23 *2013, and not any prior assumed distribution.*

24 (c) In evaluating the expected loss ratio, due consideration shall  
25 be given to all relevant factors, including the following:

26 (1) Statistical credibility of incurred claims experience and  
27 earned premiums.

28 (2) The period for which rates are computed to provide coverage.

29 (3) Experienced and projected trends.

30 (4) Concentration of experience within early policy duration.

31 (5) Expected claim fluctuation.

32 (6) Experience refunds, adjustments, or dividends.

33 (7) Renewability features.

34 (8) All appropriate expense factors.

35 (9) ~~Interest.~~ *The discount rate used in the calculation of lifetime*  
36 *expected loss ratios.*

37 (10) Experimental nature of the coverage.

38 (11) Policy reserves.

39 (12) Mix of business by risk classification.

1 (13) Product features, such as long elimination periods, high  
2 deductibles, and high maximum limits.

3 (d) *Asset investment yield rate changes may not be used to justify*  
4 *a rate increase unless the insurer can demonstrate that its return*  
5 *on investments is lower than the maximum valuation interest rate*  
6 *for contract reserves for those policies or the commissioner*  
7 *determines that a change in interest rates is justified due to changes*  
8 *in laws or regulations that are retroactively applicable to long-term*  
9 *care insurance previously sold in this state.*

10 (e) *The experience on all similar long-term care policy forms*  
11 *issued in this state by an insurer and its affiliates and retained*  
12 *within the affiliated group shall be pooled together and the*  
13 *combined experience shall be used as the basis for assumptions*  
14 *that satisfy the requirements in subdivisions (a) and (b). Those*  
15 *assumptions and requested rate increases may vary by policy form*  
16 *if actuarially appropriate. Similar long-term care policy forms*  
17 *shall be classified into one of the following benefit classifications:*  
18 *nursing facility and residential care facility only, home care only,*  
19 *or comprehensive long-term care benefits.*

20 ~~(d)~~

21 (f) Notwithstanding any other provision of this section, for rate  
22 revisions filed on or after January 1, 2010, the commissioner may  
23 approve an application for a rate revision based on less than a 70  
24 percent loss ratio, but not less than a 60 percent loss ratio, for the  
25 portion attributable to the rate increase if an insurer can  
26 demonstrate that the rates are necessary to protect the financial  
27 condition of the insurer, including avoidance of further reductions  
28 in capital and surplus.

29 (g) *This section applies only to long-term care insurance policies*  
30 *issued before the approval of rate schedules under Section*  
31 *10236.11.*

32 SEC. 4. Section 10236.2 is added to the Insurance Code, to  
33 read:

34 10236.2. Except where the provisions of a group contract  
35 provide otherwise, the provisions of subdivisions (d); ~~and (e); and~~  
36 ~~(f)~~ of Section 10236.1 shall apply to all group long-term care  
37 insurance policies issued before the approval of premium rate  
38 schedules under Section 10236.11.

39 SEC. 5. Section 10236.13 of the Insurance Code is amended  
40 to read:

10236.13. No insurer may increase the premium for an individual or group long-term care insurance policy or certificate approved for sale under this chapter unless the insurer has received prior approval for the increase from the commissioner.

The insurer shall submit to the commissioner for approval all proposed premium rate schedule increases, including at least all of the following information:

(a) Certification by an actuary, who is a member of the American Academy of Actuaries and who meets the qualification standards of that organization, that:

(1) If the requested premium rate schedule increase is implemented and the underlying assumptions, which reflect moderately adverse conditions, are realized, no further premium rate schedule increases are anticipated.

(2) The premium rate filing is in compliance with the provisions of this section.

(b) An actuarial memorandum justifying the rate schedule change request that includes all of the following:

(1) Lifetime projections of earned premiums and incurred claims based on the filed premium rate schedule increase, and the method and assumptions used in determining the projected values, including reflection of any assumptions that deviate from those used for pricing other forms currently available for sale.

(A) Annual values for the five years preceding and the three years following the valuation date shall be provided separately.

(B) The projections shall include the development of the lifetime loss ratio.

(C) For policies issued with premium rate schedules approved under Section 10236.11, the projections shall demonstrate compliance with subdivision (a) of Section 10236.14. For all other policies, the projections shall demonstrate compliance with Section 10236.1.

(D) If the commissioner determines that a premium rate increase is justified due to changes in laws or regulations that are retroactively applicable to long-term care insurance previously sold in this state, then:

(i) The projected experience should be limited to the increases in claims expenses attributable to the changes in law or regulations.

1 (ii) If the commissioner determines that potential offsets to  
2 higher claims costs may exist, the insurer shall be required to use  
3 appropriate net projected experience.

4 (2) Disclosure of how reserves have been incorporated in this  
5 rate increase.

6 (3) Disclosure of the analysis performed to determine why a  
7 rate adjustment is necessary, which pricing assumptions were not  
8 realized and why, and what other actions taken by the company  
9 have been relied on by the actuary.

10 (4) A statement that policy design, underwriting, and claims  
11 adjudication practices have been taken into consideration.

12 (5) A statement that asset investment yield rate changes have  
13 not been used to justify the rate increase unless the insurer can  
14 demonstrate that its return on investments is lower than the  
15 maximum valuation interest rate for contract reserves for those  
16 policies or the commissioner determines that a change in interest  
17 rates is justified due to changes in laws or regulations that are  
18 retroactively applicable to long-term care insurance previously  
19 sold in this state.

20 (6) If it is necessary to maintain consistent premium rates for  
21 new certificates and certificates receiving a rate increase, the  
22 insurer shall file composite rates reflecting projections of new  
23 certificates.

24 (c) A statement that renewal premium rate schedules are not  
25 greater than new business premium rate schedules except for  
26 differences attributable to benefits, unless sufficient justification  
27 is provided to the commissioner.

28 (d) Sufficient information for approval of the premium rate  
29 schedule increase by the commissioner.

30 (e) The provisions of this section are applicable to all individual  
31 and group policies issued in this state on or after July 1, 2002.

32 SEC. 6. Section 10236.14 of the Insurance Code is amended  
33 to read:

34 10236.14. ~~Beginning with the first rate application filed after~~  
35 ~~January 1, 2012, no more than one rate increase for any policy~~  
36 ~~form shall be approved in any 10-year period.~~ Approval of all  
37 premium rate schedule increases shall be subject to the following  
38 requirements:

39 (a) (1) Premium rate schedule increases shall demonstrate that  
40 the sum of the accumulated value of incurred claims, without the

1 inclusion of active life reserves, and the present value of future  
2 projected incurred claims, without the inclusion of active life  
3 reserves, will not be less than the sum of the following:

4 (A) The accumulated value of the initial earned premium times  
5 58 percent.

6 (B) Eighty-five percent of the accumulated value of prior  
7 premium rate schedule increases on an earned basis.

8 (C) The present value of future projected initial earned premiums  
9 times 58 percent.

10 (D) Eighty-five percent of the present value of future projected  
11 premiums not in subparagraph (C) on an earned basis.

12 (2) However, if the premiums in any rate revision filing  
13 calculated in this manner produce a lifetime expected loss ratio  
14 that is less than the highest lifetime expected loss ratio for this  
15 policy form in the initial filing or that for requested premium rates  
16 in any filing made after January 1, ~~2012~~ 2013, the insurer shall  
17 reduce the premiums in the filing so that the current lifetime  
18 expected loss ratio is equal to or greater than the highest initially  
19 filed loss ratio or that for requested premium rates filed after  
20 January 1, ~~2012~~ 2013. In the determination of a lifetime expected  
21 loss ratio, the margin for moderately adverse experience shall be  
22 reflected and shall not be increased unless the manner in which  
23 risks are shared between the insurer and block of policies has been  
24 changed by this law or any future law or regulation. The  
25 determination of the lifetime expected loss ratio shall be based on  
26 the actual distribution of policies issued and not any assumed  
27 distribution prior to actual sales.

28 (b) In the event the commissioner determines that a premium  
29 rate increase is justified due to changes in laws or regulations that  
30 are retroactively applicable to long-term care insurance previously  
31 sold in this state, a premium rate schedule increase may be  
32 approved if the increase provides that 70 percent of the present  
33 value of projected additional premiums shall be returned to  
34 policyholders in benefits and the other requirements applicable to  
35 other premium rate schedule increases are met.

36 (c) All present and accumulated values used to determine rate  
37 increases should use the maximum valuation interest rate for  
38 contract reserves. The actuary shall disclose as part of the actuarial  
39 memorandum the use of any appropriate averages.



1 (d) No request for a rate increase on any policy form approved  
2 under Section 10236.11 shall be approved by the commissioner  
3 except as follows: the experience on all similar long-term care  
4 policy forms issued in this state by the insurer and its affiliates and  
5 retained by the affiliated group that have been approved either  
6 prior to approval under, or pursuant to, Section 10236.11 shall be  
7 pooled together and the combined experience shall be used as the  
8 basis for assumptions that satisfy the requirements in subdivision  
9 (a). Those assumptions and requested rate increases may vary by  
10 policy form if actuarially appropriate. Similar long-term care policy  
11 forms shall be classified into one of the following benefit  
12 classifications: nursing facility and residential care facility only,  
13 home care only, or comprehensive long-term care benefits. An  
14 insurer is not precluded from filing requests for premium rate  
15 schedule increases on all of its policy forms if the combined  
16 experiences after pooling all applicable policy forms satisfies the  
17 requirements of subdivision (a).

18 (e) No approval for an increase in the premium schedule shall  
19 be granted unless the actuary performing the review for the  
20 commissioner certifies that if the requested premium rate schedule  
21 increase is implemented and the underlying assumptions, which  
22 reflect moderately adverse conditions, are realized, no further  
23 premium rate schedule increases are anticipated. The certification  
24 may rely on supporting data in the filing.

25 (f) Notwithstanding any other provision of this section, for  
26 applications for rate revisions filed on or after January 1, ~~2012~~  
27 *2013*, the commissioner may approve the application if an insurer  
28 demonstrates that the rates are necessary to protect the financial  
29 condition of the insurer, including avoidance of further reductions  
30 in capital and surplus.

31 (g) The provisions of this section are applicable to all individual  
32 and group policies issued in this state on or after July 1, 2002.